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8 PSG MORTGAGE LENDING CORP., a Delaware
9 Corporation

10 UNITED STATES BANKRUPTCY COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 In re)
14)
15 PSG MORTGAGE LENDING CORP., a Delaware)
16 Corporation,)
17)
18 Debtor and Debtor-In-Possession.)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

Case No. 21-30592-DM

Chapter 11

**AMENDED MOTION TO SELL REAL
PROPERTY AND TO: (1) SELL REAL
PROPERTY FREE AND CLEAR OF
LIENS AND INTERESTS; AND (2) PAY
REAL ESTATE COMMISSION, DEED
OF TRUST AND STANDARD CLOSING
COSTS OUT OF ESCROW**

Date: April 1, 2022
Time: 10:30 a.m.
Place: VIA ZOOM/AT&T TELE
Courtroom 17
U.S. Bankruptcy Court
450 Golden Gate Avenue
San Francisco, CA 94102

1 **TO AFFECTED LIENHOLDERS/INTEREST HOLDERS/PURPORTED/DISPUTED**
2 **INTEREST HOLDERS:**

3 **A. Non-Governmental Individuals/Entities:**

- 4 1. World Savings Bank, FSB, its successors and/or assigns, including but not
5 limited to Wells Fargo Bank (*see* Section VI. 1);
- 6 2. Natural Software Systems Inc., Money Purchase Pension Plan as to an undivided
7 65% interest and Tanya Waltemyer, a married woman as her sole and separate
8 property as to an undivided 35% interest, as assignees of Saxe Mortgage, et al;
- 9 3. Paul Greenfield, as an individual, to the extent any interests are claimed in the
10 above-referenced deed of trust (*see* Section VI. 2);
- 11 4. Dakota Note, LLC (*see* Section VI. 3); and
- 12 5. PSG Capital Partners, Inc. and Debtor PSG Mortgage Lending Corp. (*see*
13 Section VI. 5).

14 **B. Governmental Lienholders/Entities:**

- 15 1. San Francisco Department of Public Health/Public Utilities Commission (*see*
16 Section VI. 4).

17 **C. Purported/Disputed Interest Holders:¹**

- 18 1. Kay Brugnara and Family/Luke Brugnara/individually or as
19 Officer(s)/Director(s)/Shareholder(s) of Brugnara Properties VI (the “Brugnara
20 Parties”) (*see* Section VII).²

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26 ¹ *See* Adversary Proceeding Case No. 21-03065-DM pending before this Court, which is an
27 action removed from State Court that includes a claim by Luke Brugnara of some sort of interest in the
Sea Cliff Avenue Property.

28 ² The Court should note that there was a Claims Bar Deadline in this case of December 27, 2021
and that none of the Brugnara Parties timely filed a claim in this proceeding.

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1 This Amended Motion to Sell Real Property and to: (1) Sell Real Property Free and
2 Clear of Liens and Interests; and (2) Pay Real Estate Commissions, Deeds of Trust and Standard
3 Closing Costs Out of Escrow; Memorandum of Points and Authorities (224 Sea Cliff Avenue, San
4 Francisco, California [11 U.S.C. §363(b); 11 U.S.C. §363(f)(1), (2), (3), (4) and (5); 11 U.S.C.
5 §363(m); 11 U.S.C. §724; 11 U.S.C. §726(a)(4); 11 U.S.C. §551; F.R.B.P. 6004(a); B.L.R. 6004-
6 1] (“Motion”) is filed by Debtor PSG Mortgage Lending Corp. (the “Debtor”) and respectfully
7 represents as follows:

8 **I. JURISDICTION/RELIEF REQUESTED**

9 This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 1334(a) and 157.
10 Venue is proper under 28 U.S.C. §§ 1408 and 1409. The Motion is a core proceeding pursuant
11 to 28 U.S.C. §157(b)(2)(M). The Motion requests Court authorization for sale of real property of
12 the estate free and clear of liens and interests.

13 **II. MOTION TO SELL REAL PROPERTY**

14 Annexed to the Declaration of Philip Fusco in Support of this Amended Motion to Sell
15 Real Property and to (1) Sell Real Property Free and Clear of Liens and Interests; and (2) Pay Real
16 Estate Commissions, Deeds of Trust and Standard Closing Costs Out of Escrow (224 Sea Cliff
17 Avenue, San Francisco, CA (the “Fusco Decl.”) as Exhibit A is a copy of the San Francisco
18 Purchase Agreement (the “Sale Agreement”).³

19 Under the Sale Agreement, the Debtor has accepted a sales price for the Sea Cliff
20 Avenue Property of \$13,000,000.00 from a buyer (the “Buyer”), with some of the secured
21 lienholders agreeing to reduce their payoff to pay the transfer tax which will be owed to the City
22 and County of San Francisco upon the closing of the transaction in the approximate sum of
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24 ³ Out of valid concerns based upon the past and current ongoing actions and efforts of the former
25 owner of the Sea Cliff Avenue Property (Brugnara) to interfere with and disrupt any sale of the property
26 to anyone but him or his cohorts, the identities of the Buyer and the Title Company involved in this
27 transaction have been reacted and filed under seal per Court Order (Doc #112). As is set forth in Section
28 IX herein, the Buyer will be present at the sale hearing to testify and provide evidence to the Court in
support of the request for a good faith finding by the Buyer under Bankruptcy Code §363(m).

1 \$780,000.000. The Buyer will make an initial deposit of 3% into Escrow upon receipt and
2 approval of the seller's lawyer's disclosure of the status of the oceanside stairs, with Escrow to
3 close within 30 days or sooner of a Court Order approving of the transaction. By Amendment of
4 the parties, the expiration of the Agreement was extended to February 11, 2022. On February 11,
5 2022, the Debtor accepted the offer and signed the Agreement.

6 The Sale Agreement is subject to Bankruptcy Court approval and higher and better bids.

7 The sale of the Sea Cliff Avenue Property free and clear of any liens or interests is on
8 an "as-is, where is" basis, with no warranties or representations. This includes an acceptance by
9 the Buyer of all responsibility for permits and work on the cliff side and the staircase to the beach.

10 **III. OVERBIDS**

11 As is set forth in the accompanying Declaration of Mark Levinson of Compass, with
12 respect to advertising the overbid procedures, the following efforts were and are being made:

- 13 ● A description and notice of overbidding procedures and possibilities is listed on
14 the Multiple Listing Service (MLS), which is the most effective and relied upon
15 service to give notice to potential buyers, brokers and/or agents;
- 16 ● A description and notice of overbidding procedures and possibilities is set forth
17 on the private web site created for marketing the sale of the property -
18 224seacliffavenue.com and Disclosures.IO; and
- 19 ● The overbid process and procedure is disclosed and discussed with buyers and
20 their agents as well as agent previews if/when they express interest in the
21 property.

22 The minimum starting overbid is \$13,500,000.00 (together with payment of the transfer
23 tax, as noted), with minimum increments thereafter of \$50,000.00. **The deadline for submitting**
24 **qualified overbids in writing is 12 noon on March 25, 2022.** The Debtor will only consider
25 overbids from qualified buyers. Prior to overbidding, an overbidder must demonstrate the ability
26 to close the transaction to sole and complete satisfaction of the Debtor and provide a non-
27 refundable deposit (if the successful bidder) of \$390,000.00. In the event a qualified overbidder

1 or overbidders is obtained, an auction will be held on April 1, 2022. Qualified overbidders may
2 participate by Zoom video or telephone.

3 Overbids must be submitted in writing on terms equal to or better than the proposal from
4 the Buyer (see Exhibit A to the accompanying Declaration of Philip Fusco (the "Fusco Decl."),
5 e.g., all cash and close of escrow within 30 days of a Court Order approving the sale, on an "as-is,
6 where is" basis, with no warranties or representations. This includes an acceptance by the Buyer
7 of all responsibility for permits and work on the cliff side and the staircase to the beach along
8 with any remaining issues with the City/County of San Francisco. Any overbidder should contact
9 Julian Bach, Counsel for the Debtor, at (714) 848-5085 or by email (Julian@jbachlaw.com) or
10 the Estate's real estate broker, Mark Allan Levinson, COMPASS
11 (mark@markallanlevinson.com); (415) 441-5500.

12 **IV. PAYMENT OF REAL ESTATE COMMISSION AND OTHER STANDARD**
13 **CLOSING COSTS**

14 Pursuant to an agreement between the Debtor and its Broker, the Estate agreed to pay
15 a 4.0% real estate commission upon the closing of sale of the Sea Cliff Avenue Property. The
16 Buyer is representing himself. Compass, which is the brokerage firm that represents the Estate,
17 has agreed to a reduced sales commission of 2.5%.

18 After extensive marketing under adverse conditions and the exchange of offers and
19 counter-offers, the Debtor has brought the best offer to the table, subject to higher and better bids.
20 The Debtor believes this is a unique property being sold under very adverse conditions and with
21 a long history of problems and issues. Accordingly, the sale should go forward as contemplated
22 and subject to overbid.

23 **MOTION AND MEMORANDUM OF POINTS AND AUTHORITIES**
24 **IN SUPPORT OF MOTION TO SELL FREE AND CLEAR OF LIENS**

25 **V. BACKGROUND**

26 The Sea Cliff Avenue Property has been the subject of multiple prior bankruptcy filings
27 by its former owner, Brugnara Properties VI. The most recent bankruptcy by the former owner is
28 Chapter 7 Case No. 17-30501, which was commenced by Brugnara Properties VI on May 22,

1 2017 as a Chapter 11 proceeding, converted to a Chapter 7 proceeding on April 4, 2018, and
2 remains open and pending before this Court as of this date (the “Brugnara Properties VI
3 Bankruptcy Proceeding”).

4 Debtor PSG Mortgage Lending Corp.’s (the “Debtor”) predecessor in interest, PSG
5 Capital Partners, Inc., was the holder of the fourth trust deed secured against the Sea Cliff Avenue
6 Property based upon a loan it made to Brugnara Properties VI in the original principal amount of
7 \$1,000,000.00. (Fusco Decl., ¶6). There were also three trust deeds secured by the Sea Cliff
8 Avenue Property ahead of the 4th trust deed based upon loans made to Brugnara Properties VI: a
9 1st trust deed in favor of Wells Fargo recorded on April 12, 2007 with an original principal
10 balance in the amount of \$7,500,000; a 2nd trust deed in favor of Natural Software Systems, Inc.
11 et al recorded on July 12, 2013 in the original principal balance due of \$1,700,000; and a 3rd trust
12 deed in favor of Dakota Note, LLC recorded on July 21, 2015 in the original principal balance of
13 \$1,200,000. (Fusco Decl., ¶7).

14 Efforts by the Chapter 7 Trustee in the Brugnara Properties VI Bankruptcy Proceeding
15 to sell the Sea Cliff Avenue Property could not come to fruition due to various delays, including
16 tax liens that were asserted to be secured by the real property. Because the Sea Cliff Avenue
17 Property was not sold by the Chapter 7 Trustee, on May 20, 2020, this Court entered an Order
18 Granting Stipulated Relief From the Automatic Stay in the Brugnara Properties VI Bankruptcy
19 Proceeding (the “Stay Relief Order”) such that deed of trust holders Greenfield, Dakota Note,
20 LLC and/or PSG Capital Partners, Inc. could proceed with nonjudicial foreclosure of the Sea Cliff
21 Avenue Property. (Fusco Decl., ¶10).

22 Of the deed of trust holders granted relief from the automatic stay, only PSG Capital
23 Partners, Inc. opted to immediately proceed with foreclosure upon entry of the Stay Relief Order.
24 On August 13, 2020, a nonjudicial foreclosure sale of the Sea Cliff Avenue Property took place
25 under a Deed of Trust held by PSG Capital Partners, Inc., with title to the Sea Cliff Avenue
26 Property reverting back to PSG Capital Partners, Inc. The Trustee’s Deed Upon Sale was recorded
27 on October 9, 2020 as document no. 2020028282. (Fusco Decl., ¶11, Exh C). Thereafter, on
28

1 August 20, 2021, title to the Sea Cliff Avenue Property was transferred by PSG Capital Partners,
2 Inc. to the Debtor by Grant Deed recorded on August 25, 2021, document no. 2021136349. (Fusco
3 Decl., ¶12, Exh D).

4 In this bankruptcy, by ruling of this Court on October 1, 2021 in resolution of a Motion
5 to Dismiss filed by secured creditor Dakota Note, LLC (Doc #20), the Debtor was to have a
6 Motion to Sell on file with this Court by no later than November 1, 2021 or Dakota Note, LLC
7 may submit an Order Dismissing this case in its discretion at any time thereafter. No dismissal
8 Order has been submitted as of this date because of ongoing joint efforts by the Debtor and
9 Secured Creditors to have the Sea Cliff Avenue Property sold through this proceeding.

10 The Debtor has filed this Motion to sell the Sea Cliff Avenue Property free and clear of
11 liens for various reasons as described herein. Notwithstanding the short leash given to the Debtor
12 in this case, the Debtor, through its real estate broker Compass, has marketed the Sea Cliff
13 Avenue Property extensively and obtained a qualified buyer, subject to higher and better bids. The
14 Debtor believes that it and its broker have done all they can to market the Sea Cliff Avenue
15 Property and that the results of an auction will determine the highest and best price available for
16 the property.

17 **VI. SALE FREE AND CLEAR OF LIENS AND INTERESTS**

18 As will be explained more thoroughly, specifically as to each lien set forth herein below,
19 the Debtor is proposing to sell the Sea Cliff Avenue Property free and clear of liens, with the liens
20 to be paid off in full through Escrow to the extent there is available cash. Liens or potential
21 interests will be treated as noted below.

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2. **Natural Software Systems Inc., Money Purchase Pension Plan as to an undivided 65% interest and Tanya Waltmyer, a married woman as her sole and separate property as to an undivided 35% interest, as assignees of Saxe Mortgage, et al.**

A deed of trust to secure an original indebtedness of \$1,700,000 recorded July 12, 2013 as document no. 2013-705008, Book/Reel K937, Page/Image 0178 of Official Records.

Dated:	June 25, 2013
Trustor:	Brugnara Properties VI, a California corporation
Trustee:	Yeva, Inc. dba Saxe Mortgage Company
Beneficiary	Theodore J. Gradman Ph.D. 401k Plan, 300,000.00/1,700,000.00, Umberto C. Von Hofen and Kathleen A. Von Hofen, Trustees Udt Dtd 4/6/2000, 170,000.00/1,700,000.00, Robert J. Malone Trustee of The Robert J. Malone Agreement of Trust Dtd 9/28/07, 170,000.00/1,700,000.00, Lynne S. Tilsen, Trustee of Lynne S. Tilsen Living Trust Established 11/8/1990, 170,000.00/1,700,000.00, Oksana Borzina, a single woman, 170,000.00/1,700,000.00, Jeff Mogalian, a single man, 170,000.00/1,700,000.00, Jhoanne Loube, 160,000.00/1,700,000.00, Rachel Gishkin, a married woman as her sole and separate property, 150,000.00/1,700,000.00, Arkvest LLC by Kathryn Gachwiler, Managing Member, 140,000.00/1,700,000.00, Hilary A. Perr, a married woman as her sole and separate property, 100,000.00/1,700,000.00

- (a) According to the public records, the beneficial interest under the deed of trust was assigned to Natural Software Systems, Inc., Money Purchase Pension Plan 65.00% and Tanya Waltmyer, a married woman as her sole and separate property 35.00% by assignment recorded December 15, 2016 as document no. 2016-375516 of Official Records.

1 The Debtor believes that it may sell free and clear of this lien under Bankruptcy Code
2 §363(f)(1) since it will be paid off in full from Escrow. Further, it believes that the lienholder will
3 consent; therefore, the Sea Cliff Avenue Property can be sold under the terms of Bankruptcy Code
4 §363(f)(2). To the extent there is no dispute over this particular interest, it will be paid at the time
5 of the close of Escrow.

6 As will be described herein below, Paul Greenfield asserts that he owns an interest in
7 this trust deed by way of the aforementioned assignment. A search of corporate records with the
8 California Secretary of State indicates that Mr. Greenfield is the agent for service of process for
9 Natural Software Systems, Inc. and that the entity is located at the mailing address that Mr.
10 Greenfield uses in this case. Therefore, the Debtor requests that the sale order reflect that the sale
11 is free and clear of any unrecorded interest or lien in favor of Mr. Greenfield since this deed of
12 trust will be paid off in full from Escrow.

13 **3. Dakota Note, LLC**

14 A deed of trust to secure an original indebtedness of \$1,200,000 recorded July
15 21, 2015 as Document No. 2015-093637 of Official Records.

16 Dated:	July 9, 2015
17 Trustor:	Brugnara Corporation VI, a California corporation
18 Trustee:	5 Palms LLC
19 Beneficiary	Dakota Note, LLC, as to an undivided 20 1,000,000/1,200,000 interest and Silicon Valley 21 Funding Group, Inc. as to an undivided 22 200,000/1,200,000 interest

- 23
24 (a) According to the public records, the beneficial interest of Silicon Valley
25 Funding Group, Inc. under the deed of trust was assigned to Dakota
26 Note, LLC by assignment recorded April 8, 2016 as document no. 2016-
27 227749 of Official Records.
28

1 As of the time of the filing of this Motion it is unclear the extent of any overbids that
2 may occur. Nevertheless, the Debtor believes that it may sell free and clear of this lien under
3 Bankruptcy Code §363(f)(1) since it will either be paid off in full from Escrow or in an amount
4 consented to by the lienholder. Otherwise, as will be explained below, the Debtor asserts that the
5 Sea Cliff Avenue Property may be sold in conformity with Bankruptcy Code §363(f)(5), as will
6 be explained herein below.

7 4. **San Francisco Department of Public Health/Public Utilities Commission**

8 Lien for delinquent Water, Utility Tax and Wastewater Charges in favor of San
9 Francisco Water, Power and Sewer Services of the San Francisco Public Utilities
Commission

10 Against:	Brugnara Properties VI
11 Amount:	\$1,411.80
12 Recorded:	13 August 16, 2017 as Instrument No. 2017-K494971 14 of Official Records

15 This lien is to be paid from Escrow.

16 5. **PSG Capital Partners, Inc. and Debtor PSG Mortgage Lending Corp.**

17 As mentioned herein above, on August 13, 2020, a nonjudicial foreclosure sale of the
18 Sea Cliff Avenue Property took place under a Deed of Trust held by PSG Capital Partners, Inc.,
19 with title to the Sea Cliff Avenue Property reverting back to PSG Capital Partners, Inc. The
20 Trustee's Deed Upon Sale was recorded on October 9, 2020 as document no. 2020028282. (Fusco
21 Decl., ¶11, Exh C). Thereafter, on August 20, 2021, title to the Sea Cliff Avenue Property was
22 transferred by PSG Capital Partners, Inc. to the Debtor by Grant Deed recorded on August 25,
23 2021, document no. 2021136349. (Fusco Decl., ¶12, Exh D).

24 As of the time of the filing of this Motion it is unclear the extent of any overbids that
25 may occur. To the extent any sales excess proceeds remain *after* the payoffs referenced herein
26 above, including the broker commissions and costs of sale, said remaining proceeds shall go into
27 the Debtor In Possession Account established in this proceeding for payoff first in full of any
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1 allowed unsecured claims and any remaining amounts owed to the Office of the U.S. Trustee.
2 Further, upon closing of the sale and payoff of creditors, it is anticipated by the Debtor that this
3 case shall be dismissed either by submission of a dismissal Order by Dakota Note or a Motion to
4 Dismiss filed by the Debtor.

5 **VII. KAY BRUGNARA AND FAMILY/LUKE BRUGNARA/INDIVIDUALLY OR AS**
6 **OFFICER(S)/DIRECTOR(S)/SHAREHOLDER(S) OF BRUGNARA**
PROPERTIES VI.

7 In addition to the liens and interests described herein above, on September 29, 2020,
8 Luke Brugnara filed a lawsuit entitled Luke Brugnara v. Paul Greenfield, Dakota LP, CHL, PSG
9 Capital et al in the Superior Court of the State of California for the County of San Francisco, Case
10 No. CGC-20-586853 (the "State Court Action"). The State Court Action names a number of
11 Defendants, including Secured Creditors Paul Greenfield ("Greenfield") and Dakota Note LLC,
12 and sets forth several causes of action, including but not limited to seeking to Quiet Title to the
13 Sea Cliff Avenue Property in favor of Brugnara along with allegations that the loans of Greenfield
14 and Dakota Note LLC as secured by deeds of trust against the Sea Cliff Avenue Property are
15 "fraudulent."

16 Brugnara's State Court Action was removed to this Court by the Debtor on December
17 3, 2021 in furtherance of the Debtor's goal of selling the Sea Cliff Avenue Property free and clear
18 of all claims, liens and encumbrances. *See* Adversary Proceeding Case No. 21-03065-DM pending
19 before this Court, which includes a full copy of Brugnara's Complaint.

20 As noted herein above, on August 13, 2020, a nonjudicial foreclosure sale of the Sea
21 Cliff Avenue Property took place under a Deed of Trust held by PSG Capital Partners, Inc., with
22 title to the Sea Cliff Avenue Property reverting back to PSG Capital Partners, Inc. The Trustee's
23 Deed Upon Sale was recorded on October 9, 2020 as document no. 2020028282. (Fusco Decl.,
24 ¶11, Exh C). Under California law, the completion of a nonjudicial foreclosure sale of real
25 property extinguishes all rights and interests to the real property of the junior lienholders and the
26 borrower-trustor (or his or her successor in interest). (*See Cadlerock Joint Venture, L.P. v. Lobel*
27 (2012) 206 Cal.App.4th 1531, 1536, 143 Cal.Rptr.3d 96.)

1 Further, as discussed herein below, a sale free and clear of certain disputed liens is
2 authorized under the terms of the Bankruptcy Code §363(f)(4)).

3 Simply put, any interest that Kay Brugnara and Family/Luke Brugnara/individually or
4 as Officer(s)/Director(s)/Shareholder(s) of Brugnara Properties VI (the “Brugnara Parties”) still
5 claim in the Sea Cliff Avenue Property, to the extent it ever existed, was extinguished under
6 California law.

7 **VIII. SALE FREE AND CLEAR OF LIENS AND INTERESTS - BANKRUPTCY**
8 **CODE §363(f)**

9 As described above, the Debtor has presented the best offer it has received (subject to
10 higher and better bids).

11 Under §363(f), “[t]he trustee may sell property . . . free and clear of any interest in such
12 property of an entity other than the estate, only if– (1) applicable nonbankruptcy law permits sale
13 of such property free and clear of such interest; (2) such interest consents; (3) such interest is a
14 lien and the price at which such property is to be sold is greater than the aggregate value of all
15 liens on such property; (4) such interest is in bona fide dispute; or (5) such entity could be
16 compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.” 11
17 U.S.C. §363(f).

18 Wells Fargo Bank, which is the holder of the first trust deed, will be paid off in full
19 through escrow at the close of the sale. Regarding lienholders (a) Natural Software Systems Inc.,
20 Money Purchase Pension Plan as to an undivided 65% interest and Tanya Waltemyer, a married
21 woman as her sole and separate property as to an undivided 35% interest, as assignees of Saxe
22 Mortgage, et al. [Second Trust Deed], and/or Paul Greenfield, as an individual, to the extent any
23 interests are claimed in the above-referenced deed of trust; (b) Dakota Note, LLC [Third Trust
24 Deed], and (c) the Debtor, all such claims and interests will consent to the sale and accept an
25 agreed upon (reduced) amount in full satisfaction of their respective claims and interests.
26 (§363(f)(2)).
27
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1 As for any purported claims of interest in the Sea Cliff Avenue Property by Luke
2 Brugnara or Katherine Brugnara⁵, Bankruptcy Code section 363(f)(4) provides that, “[t]he trustee
3 may sell property under subsection (b) or (c) of this section free and clear of any interest in such
4 property of an entity other than the estate, only if - “one of at least several independent
5 circumstances exist including “. . . (4) such interest is in bona fide dispute; . . .” The Ninth Circuit
6 Bankruptcy Appellate Panel has stated that, “[t]he purpose of §363(f)(4) is to permit property of
7 the estate to be sold free and clear of interests that are disputed by the representative of the estate
8 so that liquidation of the estate’s assets need not be delayed while such disputes are being
9 litigated.” Moldo v. Clark (In re Clark), 266 B.R. 163, 171 (9th Cir. BAP 2001). “Typically, the
10 proceeds of sale are held subject to the disputed interest and then distributed as dictated by the
11 resolution of the dispute; such procedure preserves all parties’ rights by simply transferring
12 interests from property to dollars that represent its value.” Id.

13 A “bona fide dispute” exists if there is an “objective basis for either a factual or a legal
14 dispute as to the validity of the [claim].” In re Vortex Fishing Systems, Inc., 277 F.3d 1057, 1065
15 (9th Cir. 2002)(quotations omitted). The “mere existence of pending litigation or the filing of an
16 answer is insufficient to establish the existence of a bona fide dispute.” Id. at 1066. The Trustee
17 has the burden of demonstrating that a “bona fide dispute” exists. In re Terrace Chalet
18 Apartments, Ltd., 159 B.R. 821, 828 (N.D.Ill. 1993).

19 Here, on September 29, 2020, Luke Brugnara filed his State Court Action against
20 Secured Creditors Greenfield and Dakota Note LLC, asserting several causes of action, including
21 but not limited to seeking to Quiet Title to the Sea Cliff Avenue Property in favor of Brugnara,
22 along with allegations that the loans of Greenfield and Dakota Note LLC as secured by deeds of
23 trust against the Sea Cliff Avenue Property are “fraudulent.” Brugnara’s State Court Action was
24

25 ⁵ As mentioned herein above, Brugnara Properties VI remains in a pending Chapter 7 bankruptcy
26 proceeding before this Court. There is no indication that the bankruptcy estate claims any further interest
27 in the Sea Cliff Avenue Property due to the completed foreclosure. Further, neither Luke Brugnara nor
28 Katherine Brugnara represent that bankruptcy estate and have no authority to act on behalf of that estate
to either assert such an interest and/or challenge the completed foreclosure sale.

1 removed to this Court by the Debtor on December 3, 2021 in furtherance of the Debtor's goal of
2 selling the Sea Cliff Avenue Property free and clear of all claims, liens and encumbrances. *See*
3 Adversary Proceeding Case No. 21-03065-DM pending before this Court, which includes a full
4 copy of Brugnara's Complaint.

5 Likewise, the Debtor has commenced an Adversary Proceeding in this Court seeking a
6 Declaratory Judgment confirming that neither Luke Brugnara nor Katherine Brugnara have any
7 valid lien, claim or interest in the Sea Cliff Avenue Property. *See* Adversary Proceeding Case No.
8 22-03007-DM pending before this Court, which includes a full copy of the Debtor's Complaint.

9 As noted herein above, on August 13, 2020, a nonjudicial foreclosure sale of the Sea
10 Cliff Avenue Property took place under a Deed of Trust held by PSG Capital Partners, Inc., with
11 title to the Sea Cliff Avenue Property reverting back to PSG Capital Partners, Inc. The Trustee's
12 Deed Upon Sale was recorded on October 9, 2020 as document no. 2020028282. (Fusco Decl.,
13 ¶11, Exh C). Under California law, the completion of a nonjudicial foreclosure sale of real
14 property extinguishes all rights and interests to the real property of the junior lienholders and the
15 borrower-trustor (or his or her successor in interest). (*See Cadlerock Joint Venture, L.P. v. Lobel*
16 (2012) 206 Cal.App.4th 1531, 1536, 143 Cal.Rptr.3d 96.) Clearly a bona fide dispute exists as to
17 any interest that Luke Brugnara or Kay Brugnara claim to still have in the Sea Cliff Avenue
18 Property.

19 Finally, it should be noted that it is not a requirement for an application of section
20 363(f)(4) that the remaining sales proceeds be sufficient to satisfy all disputed liens. The five
21 different grounds for selling "free and clear of liens" under Section 363(f) are in the alternative,
22 as is shown by the use of the word "or" at the end of section 363(f)(4) which is contrasted with
23 the use of the word "and" at the end of section 363(h)(3) which establishes that all four conditions
24 set forth in 363(h) for the sale of jointly owned property must be satisfied. See, e.g. *In re Patriot*
25 *Place, Ltd.*, 486 B.R. 773, 796, ft. 6, (Bkrtcy E.D. Tex 2013); *In re U.S.A. United Fleet, Inc.*, 496
26 B.R. 79, 83 (Bkrtcy E.D.N.Y. 2013). Section 363(f)(3) independently provides that there can be
27 a sale free and clear of liens if "such interest is a lien and the price at which such property to be
28

1 sold is greater than the aggregate value of all liens on such property.” If satisfying the conditions
2 of subsection (f)(3) were a condition for satisfying the condition of (f)(4), they would not be in
3 the alternative and there would be no point to having (f)(4) at all.

4 Simply put, the Debtor asserts that it may sell the Sea Cliff Avenue Property free and
5 clear of any and all interest(s) claimed in the Sea Cliff Avenue Property by the Brugnara Parties
6 and that this Court should enter an Order authorizing the same.

7 **IX. GOOD FAITH FINDING**

8 Under the terms of Bankruptcy Code Section 363(m), the reversal or modification on
9 appeal of an authorization under §363(b) of this section of a sale does not affect the validity of
10 the sale to an entity that purchased a property in good faith. The Buyer will be present at the
11 hearing to testify and provide evidence in support of the request for a good faith finding by the
12 Buyer under Bankruptcy Code §363(m).

13 **X. RULE 62(a) OF THE FEDERAL RULES OF CIVIL PROCEDURE AND/OR**
14 **BANKRUPTCY RULE 6004(h)**

15 The Debtor requests that the order approving the proposed sale of the Sea Cliff Avenue
16 Property provide as follows: “This order is effective upon entry, and the stay otherwise imposed
17 by Rule 62(a) of the Federal Rules of Civil Procedure and/or Bankruptcy Rule 6004(h) shall not
18 apply.”

19 **XI. LIEN RECORDINGS SINCE LAST TITLE REPORT**

20 Exhibit B attached to the Fusco Decl. is a “Preliminary Report Dated as of January 21,
21 2022” title report issued by the Title Company. The Buyer has requested and the Debtor has
22 agreed to seek an order selling free and clear of any liens that are recorded after the January 21,
23 2022 date of the title report until and including the date of closing. Any liens asserted against the
24 Sea Cliff Avenue Property would be asserted in violation of Bankruptcy Code §362(a)(4) (11
25 U.S.C. §362(a)(4)). Accordingly, the Debtor will request that the sale order include such a
26 provision, if necessary.

1 **XII. CONCLUSION**

2 Given all of the above, the Debtor asserts that the sale should be approved, either with
3 the consent of junior lienholders or as explained above.

4 **WHEREFORE**, the Debtor respectfully requests that the Court grant the Amended
5 Motion in its entirety.

6 Dated: March 9, 2022

Respectfully submitted,
LAW OFFICE OF JULIAN BACH

7
8 By: _____

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